

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ANTONIO MENDOZA,

Plaintiff,

CIVIL ACTION NO. 08-CV-13677-DT

vs.

DISTRICT JUDGE AVERN COHN

**JAN M. GOLDBERGER,
et al.,**

MAGISTRATE JUDGE MONA K. MAJZOUN

Defendants.

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REPORT AND RECOMMENDATION

I. RECOMMENDATION: Defendants Larry DuRussel and Bonnie Dellar should be **DISMISSED** without prejudice pursuant to Fed. R. Civ. P. 4(m) for failure to effect service.

II. REPORT:

This matter comes before the Court *sua sponte* following this Court's issuance of an Order to Show Cause for Plaintiff to show cause why his Complaint should not be dismissed as to Defendants Larry DuRussel and Bonnie Dellar pursuant to Fed. R. Civ. P. 4(m). (Docket no. 18). The Order to Show Cause was entered on October 29, 2008. Plaintiff was ordered to respond within ten days but has not responded. All pretrial matters have been referred to the undersigned for decision. (Docket no. 4). The Court dispenses with oral argument pursuant to E.D. Mich. LR 7.1(e).

Rule 4(m) provides that if a defendant is not served within 120 days after the complaint is filed, the court must dismiss the action without prejudice against that defendant or order that service be made within a specified time. Fed. R. Civ. P. 4(m).

The Court has unsuccessfully attempted to effect service of process on these Defendants at the addresses provided by Plaintiff. (Docket nos. 7, 9). The time has expired for Plaintiff to effect proper service. Plaintiff has failed to respond to the Court's Order to Show Cause. There is therefore no showing that an extension of time for service will result in these Defendants being served with process. These Defendants should therefore be dismissed without prejudice pursuant to Rule 4(m).

III. NOTICE TO PARTIES REGARDING OBJECTIONS:

The parties to this action may object to and seek review of this Report and Recommendation, but are required to act within ten (10) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1) and E.D. Mich. LR 72.1(d)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Sec'y of Health & Human Servs.*, 932 F.2d 505 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). Filing of objections which raise some issues but fail to raise others with specificity, will not preserve all the objections a party might have to this Report and Recommendation. *Willis v. Sec'y of Health & Human Servs.*, 931 F.2d 390, 401 (6th Cir. 1991); *Smith v. Detroit Fed'n Of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this Magistrate Judge.

Any objections must be labeled as “Objection #1,” “Objection #2,” etc. Any objection must recite *precisely* the provision of this Report and Recommendation to which it pertains. Not later than ten days after service of an objection, the opposing party must file a concise response proportionate to the objections in length and complexity. The response must specifically address each issue raised in the objections, in the same order and labeled as “Response to Objection #1,” “Response to Objection #2,” etc.

Dated: January 08, 2009

s/ Mona K. Majzoub
MONA K. MAJZOUB
UNITED STATES MAGISTRATE JUDGE

PROOF OF SERVICE

I hereby certified that a copy of this Report and Report and Recommendation was served upon Antonio Mendoza and Counsel of Record on this date.

Dated: January 08, 2009

s/ Lisa C. Bartlett
Courtroom Deputy